

**STATE BOARD OF EQUALIZATION**

(916) 445-5550

March 3, 1989

W--- N. G---
H--- and M---
XXX --- ---, XX^h Floor
--- ---, California XXXXX-XXXX

Re: H--- B. K--- and
G--- B--- Corporation

Dear Mr. Greene:

This is in response to your letter dated February 2, 1989. You ask that we confirm that the transfer of an aircraft by H--- B. K--- to G--- B--- Corporation is not subject to sales or use tax, and that the subsequent charter or lease by G--- of the aircraft to Mr. K--- or others will not be subject to sales or use tax.

Mr. K--- purchased the aircraft in September, 1987. He filed a Consumer Use Tax Return with respect to his purchase of the aircraft and paid the use tax. Mr. K--- is the sole owner of the aircraft, free and clear of all liens and encumbrances. He now plans to transfer the aircraft to G---. G--- will not pay any consideration to Mr. K--- or any other person in exchange for the contribution of the aircraft to its capital and, in particular, will not issue any stock or other securities or assume any indebtedness or other liability in connection with the transfer. However, you note that in order to make an effective transfer of the aircraft for federal regulatory purposes, Mr. K--- may be required by the FAA to execute a document entitled "Bill of Sale" which recites formalities of consideration. You state that any such recital of consideration in the Bill of Sale would be made only for purposes of complying with FAA requirements and, in fact, G--- will furnish no consideration to Mr. K---.

You cite Revenue and Taxation Code sections 6006(a) and 6010(a) for the proposition that a transfer of tangible personal property that is not in exchange for some consideration is not a sale or purchase under the Sales and Use Tax Law. We agree. The completion of the Bill of Sale for FAA purposes will not change this conclusion provided there actually is no consideration paid by G--- or received by Mr. K--- in exchange for the transfer of the aircraft. Since the transfer will not be a sale or purchase, there is no sales or use tax with respect to the transfer.

We also agree that the aircraft is mobile transportation equipment (MTE) under Revenue and Taxation Code section 6023, and that its lease is not a sale or purchase under the Sales and Use Tax Law (Rev. & Tax. Code §§ 6006(g)(4), 6010(e)(4)). That is, the lessor is the consumer of leased MTE. Tax is due on the fair rental value of lased MTE Only when the lessor elects to pay its use tax liability in this manner. (See Rev. & Tax. Code §§ 6092.1, 6094(d), Reg. 1661.) G--- will acquire the aircraft in a transfer for which G---'s use of the aircraft will not be subject to use tax. Therefore, G---'s lease of the aircraft, which is regarded as G---'s own use, is also not subject to use tax.

If you have further questions, feel free to write again.

Sincerely,

David H. Levine
Tax Counsel

DHL/smt